83-1079

No.

In the

Supreme Court of the United States

OCTOBER TERM, 1983

MILDRED TRAVERS,

Petitioner,

vs.

TRAVENOL LABORATORIES, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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The Scheffer Press, Inc.—(312) 263-6850

QUESTIONS PRESENTED FOR REVIEW

(1) Whether the lower court's ruling abridged the right of the petitioner to a fair airing of her complaint and equal protection under the Title VII law.

(2) Whether to leave stand this ruling condones a form of segregation by prejudgment of persons of the Petitioners' color and physical traits.

(3) Whether a social theory can serve as a premise for denying a legal claim.

(4) Whether it is ever legal for a corporation receiving Federal Contracts to intimidate, suspend, threaten with discharge and discharge a minority employee for making contact with their corporate EEO/Affirmative Actions Office.

LIST OF PARTIES

All parties appear in the caption of the case.

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PRO SE Petitioner, MILDRED M. TRAVERS, prays that a Writ of Certiorari be issued to review the decisions of the United States District Court for the Northern District of Illinois, Eastern Division and the United States Court of Appeals for the Seventh Circuit.

Opinions Below

The Opinion of the District Court is not reported and is attached as Appendix H (9a-16a); The Opinion of the Court of Appeals is not reported and is attached as Appendix K (20a)

Jurisdiction

The judgment of the Court of Appeals (App. K, 20a) was entered Oct. 4, 1983.

The judgment of the District Court was entered July 9th, 1982 (App. H)

Jurisdiction is invoked under Title VII 42 USC 2000 *et seq*

Constitutional and Statutory Provisions Involved

The Fourteenth Amendment to the United States Constitution provides in relevant part:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof . . . shall not be deprived of life, liberty or property without Due Process of Law; nor be denied the equal protection of the law.

42 USC § 2000e-2. Unlawful employment practices — Title VII

Employer practices

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an em-

ployee, because of such individual's race, color, religion, sex, or national origin.

Federal Rule of Civil Procedure 52a:

Rule 52. Findings by the Court

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

STATEMENT OF THE CASE

This suit originated in 1980, when petitioner, Mildred Michael Travers, a 46 year old Black female Medical Technologist represented by her counsel filed a complaint in the United States District Court for the Northern District of Illinois, charging that her discharge from her job, and the disparate manner in which she was treated during her tenure in her relationship with the respondent, was purposely, intentionally, racially motivated. Named as defendant was Travenol Labora-

tory Inc., a subsidiary of Baxter-Travenol, Inc. Morton Grove, Ill.

The facts giving rise to this litigation can be summarized as follows:

In February 1979 the petitioner answered a help wanted newspaper ad for a histologist (a kind of medical technologist) placed by respondent and was upon interview and reference check (App. A-1a) judged by them to be impressively qualified to make an excellent contribution to their company (App. B-3a). After this assessment respondent did not hire petitioner until they had exhausted* all other efforts to find someone else. Failing to find another qualified applicant (by their testimony), respondent made a job offer (App. B-3a) to petitioner without telling her that the position had been down graded in both status and benefits** during the interim five week period between her interview and the date of offer. Petitioner accepted what she believed to be the position identified during the interview and began work. Upon discovering her true status, she complained through her immediate chain of command, failing to have the matter rectified, she then complained to the respondent's corporate EEO/ Affirmative Actions office, which resulted in petitioner's position being returned to the status that was identified during the job interview.

The petitioner believed that the facts that she has chronolized here qualified to be addressed by those hav-

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* Respondent ran newspaper ad again after the interview with Petitioner.

** Did not furnish her with the new benefits brochure to consider along with the offer.

ing EEO/Affirmative Actions responsibilities because she believed that the act of continuing their search for someone else (App. B-3a) after they already found in her someone exceptionally qualified, showed a wish or intent on their part to act in a discriminatory manner toward her and the reason for that intent was inferred by the logical and reasonable elimination of all other possibilities except race or color.*

Much conflict existed in the workplace resulting in petitioner's continuing efforts to seek relief through her immediate superiors and the corporate EEO/Affirmative Actions Office. After a period of time petitioner filed a complaint with the Equal Employment Opportunity Commission. Immediately thereafter, respondent issued petitioner a letter (App. F-7a) restricting her, under threat of discharge**, to her immediate chain of command for redress of concerns and excluding the corporate EEO/Affirmative Actions Office.

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* She made no salary demands that respondent was unwilling to meet; bore no restrictive physical handicaps; had no restrictive family obligations to interfere with regular and prompt attendance; was educationally and technologically qualified (Appendix B); her person was properly presentable, her manner was polished and refined, her references laudatory; job carried no requirements for stature or strength and finally, of the forty-three people staffing the Toxicology Department, only one (other than petitioner) was Black and his status was menial.

** Testimony taken during discovery shows that contrary to trial testimony Respondent did know that petitioner had filed an Equal Employment Opportunity Commission Complaint when they issued letter threatening her with discharge (App. F-7a).

Petitioner draws nexuses between the manner in which her immediate superior hired her; her going over their heads to corporate headquarters; the intense emotional stress she felt in the workplace which led to a complaint of harrassment to the Equal Employment Opportunity Commission; and her subsequent discharge.

Respondent stated their position as follows:

There was no intent to deny petitioner a job, indicated by their continuing their search for someone else after interviewing her; they simply wanted to search, further and that when they decided to hire her, the status change was because they wanted to promote an employee already on staff and, by company policy*, had to down grade the position being offered to petitioner in order to grant that interim promotion. They testified further that the manner of hire was a misunderstanding on the part of the petitioner and was no effort to deny her, because of her race, a position of administrative status and outstanding company benefits as she charged. (There was no court ruling addressing the issue of petitioner's not being told of the change in status and benefits prior to accepting job offer; or the issue of whether Federal Statutes had been violated by excluding the corporate EEO/Affirmative Actions Office from petitioner's avenues of redress; of her being suspended for contacting them.)

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* There was no documented copy of such a company policy in evidence.

Noteworthy: a study of the chronology of events shows that for as long as respondent continued their search for someone other than petitioner they did not grant the interim promotion (position was vacant for 3 months) but when they made the offer to petitioner they then granted that interim promotion.

Petitioner was suspended from her job in a letter which cites her contacting the EEO/Affirmative Actions Officers (App. G-8a — Dennis Bridge was Managing Director and Michael Smith was his Assistant) in violation of respondent's previous instructions and was subsequently discharged without benefit of a hearing.

In May, 1982 petitioner's claim under Title VII was tried contemporaneously with the 42 USC, 1981 claim and each was decided adversely to her.

The district court ruled that the manner of hire was only an "error" on the part of respondent and that petitioner's color and physical characteristics caused her to misperceive, (App. H-11a-9) in this work situation, and believe that she was being disparately treated when in fact the company was acting in good faith.

On August 2nd 1982, Petitioner filed a *pro se* Notice of Appeal paying the $70.00 docketing fee. On August 31st 1982, she asked the District Court to grant "pauper" status and issue the trial transcript so that she could appeal both bench and jury trials. On September 20, 1982 that status was denied, court stating that her appeal lacked merit. On the same day she petitioned the Appellate Court for the same status, this time requesting trial transcript and appointment of counsel. On February 1st 1983, the latter court ruled (App. I-17a) that "pauper" status was a moot issue because she had already paid the docketing fee; also denied both counsel and transcript ruling that her appeal lacked merit. Because she had already paid the filing fee, she was entitled to proceed with her appeal, and on March 3, 1983 filed a brief appealing those trial errors which she could prove with trial exhibits, in lieu of transcript, invoking juris-

diction under both Title VII and 42 USC 1981 laws, believing that among those trial exhibits were documents allowed into evidence by the court below that did prejudice the jury against her and that there was discovered testimony denied entry which would have helped her prove her claim before the jury.

The Appellate Court ruled that only the Title VII had been appealed and on Oct. 4, 1983 denied that appeal (App. K-20a).

REASONS FOR GRANTING THE WRIT

The lower courts' ruling that petitioner's color and physical traits cause in her a hypersensitivity to race discrimination (App. H-11a, finding 9; 12a, finding 13) and therefore renders her set of facts not credible, conflicts with her rights secured by the 14th Amendment under the Due Process Law, and further, abridges her rights under the Title VII Law. She is not only entitled to an appearance before the appropriate tribunal set to hear her claim, but above all else, she is entitled to such safeguards for the full protection of her individual rights as are prescribed under the law to which her class of case belongs. No fact can be presumed against her without proof. There is no proviso for the abridgment of her rights, for any reason, under the Title VII Law.

The court seems to be expressing it's belief that there is a condition in society that causes people of petitioners' physical traits to have a special problem coping in relation to race and color discrimination. The need for the court's expression of such a belief seems to be brought about because petitioner complained of being compared to "Aunt Jemima" "King Kong" and a "Black Mammy Doll" and because she (and others of her physical traits) have this special identification or belong to this minority within a minority that "qualifies" to be labelled as "Aunt Jemima" their complaints of racial discrimination must not be given the same weight before the bar of justice as other complainants qualifying under Title VII. The court has an apparent knowledge of

the history of Black People in America and a knowledge of petitioner's complaints of being compared to the aforementioned symbols and has drawn an inference from one or both, that somehow because the petitioner belongs to a subgroup of the Black race that has retained its physical ethnicity after the evolvement of the mecegenated Black person that she (and others like her) is more sensitive to race/color discrimination and is more likely to complain of unfounded disparate treatment than others. Such a ruling not only affects future trial cases but affects in the future chances of employment for such Blacks as are physically represented by this petitioner.

The Appellate Court refused to challenge the District Court's "implicit credibility" (App. K-24a) on this and other matters relating to this case.

The discretion granted the judiciary under Federal Rule of Civil Procedure 52(a) must be presumed to be controlled by judicial self-restraint and that no employment of the court's personal views which are inconsistent with existing decisional or statutory law be permitted to serve as premises on which findings turn. It is, after all, the duty of the court to decide according to facts alleged and proved. The societal effects of petitioner's color, etc. is a social theory which can be alleged (though neither side did so) but cannot be proved. Surely if the court believes that petitioner belonged to a group that has been affected by a societal flaw and decides from that fact alone what her expected behavior pattern will be, that court then has not exercised its function impartially and its judgment has been swayed by a preconceived opinion. That the petioner perceived negative intent from being compared

to a symbol which has historically ridiculed and derogated her ethnicity does not supply proof that she is suffering from paranoia and that her facts are not credible.

The existence of psychological and emotional residuals relative to color and physical characteristics of Black People and resulting from their enslavement and segregation is in no measure being denied by the petitioner but it is an issue that has affected some of the decedents on both sides of the discrimination issue. In the relationship between petitioner and respondent, the District Court's ruling considers these residuals as being unilateral, i.e., only petitioner has been so affected and that the allowance of an atmosphere conducive of the usage of such labels as "Aunt Jemima" and King Kong in no manner tells the court that there is good reason to give petitioner's credibility equal weight in its exercise of deciding whose facts are to be believed.

Neither court inferred discriminatory intent or apparently any wrong doing committed by respondent whether related to race or not. Contained among those issues before the lower courts was a charge that even after petitioner was given her proper job status, the same system for employee merit evaluation used on all other administrative personal in her department was not used with her.

After her suspension for contacting (App. G-8a) EEO/Affirmative Actions Office petitioner was subsequently discharged without a hearing under the pretext that she committed acts of insubordination by refusing to establish a filing system and to remove a cardboard divider positioned in front of her desk and that she walked

away from her boss while he was giving her instructions. Claims which petitioner was not given a chance to refute before being discharged. Respondent "reconstructed" the cardboard divider to photograph for use as a trial exhibit but in doing so, increased its size almost double. Those photographs were shown to both courts and jury.

CONCLUSION

The decision below is clearly erroneous. It's effects, if allowed to stand, are far reaching. It sends a signal to employers to consider with great caution the hiring of people of petitioner's "color and physical characteristics"; It sets a precedence in future discrimination complaints that such physical traits can be used as a test of credibility in such charges. The Court has unjustifiably and irresponsibly attempted to evaluate the residual effects of slavery and segregation on this petitioner.

A writ to review the bench trial should be granted for all of the aforementioned reasons; and the discretion of this Court is asked in reviewing the jury trial also, since each claim contains the same set of facts.

Respectfully submitted,

PRO SE
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Chicago, Illinois 60659
(312) 465-0938

APPENDIX A

LOYOLA UNIVERSITY STRITCH SCHOOL OF MEDICINE

2160 South First Avenue
Maywood, Illinois 60153
(312) 531-3000

February 22, 1979

Dr. Roger Izzo
Baxter Labs
6301 Lincoln Avenue
Morton Grove, Illinois 60053

Dear Dr. Izzo:

I am writing on behalf of Mrs. Mildred Travers who has applied to you for a position. Mrs. Travers came to work in this department at a time when we were beginning to undertake a complete reorganization of our histology teaching slide sets. This was a major undertaking since the sets had to be increased significantly in number and almost all of the slides had to be prepared anew. This task is now more or less completed, except for a few special slides, and Mrs. Travers has achieved this single-handedly, since she is the only histology technologist in our department. Obviously, since our slides are issued to students—both medical and graduate—for learning purposes, the quality of the work has had to be high. Indeed because of the nature of the work and because of our particular needs, our emphasis has all along been on quality rather than on quantity. I think that we made this clear to Mrs. Travers from the outset and we have been very satisfied with the quality of slides which she has prepared for our teaching sets. Mrs. Travers has displayed a sense of pride in her work and has shown a motivation to carry out her histology assign-

ments in a successful and accurate manner. I know that she will undertake her work with you in a serious and conscientious way.

I hope that this letter provides you with the sort of information you require. If we can be of further assistance, please do not hesitate to call the Personnel Department at the Medical Center (Director, Mr. Norbert Heuel).

With best wishes . . .

Yours, sincerely,

/s/ Charles C.C. O'Morchoe
Charles C.C. O'Morchoe, M.D., Ph.D.
Chairman and Professor
Department of Anatomy

CCCO/fcb

APPENDIX B

TRAVENOL LABORATORIES, INC.
Morton Grove, Illinois 60053

March 23, 1979

Ms. Mildred Travers
6206 N. Hoyne Ave.
Chicago, IL 60659

Dear Ms. Travers:

This is a confirmation of the job offer made to you on 3-21-79. As we discussed, your salary will be $13,300. The title of your prospective position is Sr. Technician —Histology, and you will be working in the Toxicology Department under the supervision of Dr. Rodger Izzo. As you know, this offer is contingent upon successfully completing our company physical. I have enclosed a physical form for your doctor to complete. Should you decide to accept our offer, please have the completed form returned to us before you begin your employment. Both Rodger and myself were very impressed with your qualifications and think you will make an excellent contribution to the Toxiocology Department.
Should any questions arise, please feel free to call me.
Sincerely,

/s/ Bill Bartnick
Bill Bartnick

Employment Supervisor

BB/bp

APPENDIX C

No. 41819

TRAVENOL LABORATORIES INC.

EMPLOYMENT REQUISITION

Job Description

Date: 1/22/79

Location: MG

Dept. Name: Toxicology

Dept. Loc. Code: MG

Responsibility No. 71-711730

Job Title: Research Asst-Tox

Job Code: D03B1

Classification: [x] Salary Exempt

Shift: 1

Immediate Supervisor: Rodger Izzo

Department Head: S. White (acting)

[x] Replacement for Carol A. Cipicchio

Reason for Replacement: [x] Termination or Resignation

Effective date of change as shown on PCN 1/26/79

Describe Job (List major functions and Responsibilities):

(See job description)

filled by S. Larcker
3-26-79

APPENDIX D

No. 41967

TRAVENOL LABORATORIES INC.

EMPLOYMENT REQUISITION

Job Description

Date: 3/19/79

Location: Morton Grove

Dept. Name: Toxicology

Dept. Loc. Code: MG

Responsibility No. 71-711730

Home Dist. Code: MG

Job Title: Tech., SR.

Job Code: D04C3

[x] Salary Non-exempt

[x] Full Time

Immediate Supervisor: Rodger Izzo

[x] Replacement for Sally Larcker

Reason for Replacement: [x] Promotion

Department Head: John Mennear

Describe Job (List major functions and Responsibilities):

(See job description)

filled by Mildred Travers
4-2-79

APPENDIX E

Q. And isn't it a fact that Rodger Izzo admitted that he knew she had gone to the EEOC prior to the meeting that took place?

MR. PARSONS: I object to the word "admitted"; made a statement.

MR. REID:

Q. Okay, make a statement, which from that statement you could glean that he knew that she had gone to the EEOC?

A. Yes, I believe that Dr. Izzo stated that Miss Travers told him her purpose for requesting time off and he in fact granted her that time off to go to the EEOC.

APPENDIX F

Interoffice correspondence

to: Mildred Travers date: December 21, 1979

from: Dr. Stanley White copies: P. Duski

subject: R. Izzo

J. Mennear

You have been advised as to the standards of conduct and behavior which the Company expects to be observed in the laboratory. In this regard, you are expected to:

Conduct yourself in a professional manner as your position dictates.

You are also expected to perform duties as assigned and to follow all reasonable and necessary instructions from appropriate supervision.

Further, as previously discussed with you on June 15, 1979, and in accordance with our discussion of December 21, 1979, this memo will confirm that you have been directed to follow the procedure identified below in presenting your work related problems to the Company.

First the matter must be reviewed with your supervisor, Dr. Roger Izzo. After allowing Dr. Izzo a reasonable time to look in to the problem, if you are dissatisfied with the outcome or you are unable to resolve the issue, you are directed to contact Dr. John Mennear. If you are unable to resolve the issue with him or you are dissatisfied with the outcome, your final recourse is to contact Paul Duski, Personnel Manager, who will make the final decision. While your final review is to Paul, Paul has been instructed to inform appropriate management of the situation.

Should you choose to ignore or elect to circumvent this procedure, or should you fail to perform what is expected of you, you are advised the Company may have no alternative but to terminate your employment.

SCW/lc

APPENDIX G

TRAVENOL LABORATORIES, INC.

Morton Grove, Illinois

Interoffice correspondence

Mildred Travers — February 8, 1980

Roger Izzo

L. Aulwes
D. Bridge
J. Mennear
S. White

On December 21, 1979, you were advised, both orally and in writing, by Dr. Stanley White concerning the standards of conduct and behavior expected of you in the laboratory. In addition, you were advised that when you had a work related problem that you were to follow the procedure as specified.

Mildred, you have again altered and disrupted the work environment. I understand that you may have attempted to contact Mike Smith on February 1, 1980, and you in fact contacted Dennis Bridge today, February 8, 1980. Because it appears you have ignored or elected to circumvent the procedure outlined in the December 21, 1979 memo, the Company is suspending your employment, with pay, until February 22, 1980 pending its investigation of the circumstances surrounding your actions.

You will be contacted on Friday, February 22, 1980, concerning the outcome of the Company investigation and future disposition. During this two week period, you are not to report to work, but should additional information be requested from you, you will be contacted.

LA/lc

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 80 C 4364

MILDRED M. TRAVERS,

Plaintiff,

vs.

TRAVENOL LABORATORIES, INC.,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action has been tried upon the facts without a jury.[1] After considering all the evidence and the briefs and arguments of counsel, in accordance with Fed. R. Civ. P. 52(a) the Court finds the facts and states its conclusions of law as follows:

Findings of Fact ("Findings")

1. Plaintiff Mildred M. Travers ("Travers") is a Black female citizen of the United States and a resident of the City of Chicago, County of Cook and the State of Illinois.

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[1] Plaintiff's claim under Title VII of the Civil Rights Act of 1964, on which she had no right to a jury trial, was tried contemporaneously with her claim under 42 U.S.C. §1981 and the Fourteenth Amendment, which was tried before a jury pursuant to plaintiff's timely jury demand. That claim was decided adversely to plaintiff by the jury's returning a verdict in favor of defendant.

2. Defendant Travenol Laboratories, Inc. ("Travenol") is a corporation engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) (part of "Title VII") of the Civil Rights Act of 1964, 42 U.S.C. §§2000e(b), (g) and (h). Travenol employs more than 15 persons and maintains offices in Deerfield and Morton Grove, Illinois and other places.

3. Travenol's employment practices referred to in these Findings and Conclusions were committed within the Northern District of Illinois.

4. On February 4 and on March 12, 1979[1] Travenol advertised in the *Chicago Tribune* help wanted ads for a histologist with one to three years of relevant experience. Travers responded to the *Tribune* ad by letter dated February 12, enclosing a copy of her resume stating her prior educational background and job experience.

5. Travers was initially interviewed by William Bartnick ("Bartnick," then the Morton Grove employment supervisor) and then by Dr. Roger Izzo ("Izzo," the head of Travenol's Morton Grove laboratory departments, including the toxicology lab and its histology department) and Rita Elizondo ("Elizondo," the histology supervisor), all on February 16. At her interview with Bartnick, Travers was given a packet of information for salaried exempt employees.

6. Travers received a job offer for a salaried non-exempt position of senior technician in histology in a March 23 letter from Bartnick. Under Travenol's personnel procedures, that was the only position available in the histology department when Travers was hired, although a salaried exempt position had been available when the original *Tribune* ad was placed. That difference in available positions stemmed from the interim promotion of another employee in a different laboratory. There was no race or

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[1] All dates without any year designation were also during 1979.

color discrimination involved in the promotion or in the resulting changes in Travenol's table of organization and the vacancy available to Travers.

7. Travers accepted the offer and began her employment April 2 as a senior technician-histology in the toxicology lab at Travenol's Morton Grove facility. On April 4 Travers learned that she had been hired as a bi-weekly salary non-exempt employee. Travers immediately complained to Bartnick that she thought she had been hired as a salaried exempt employee because of the information given her by Bartnick at her interview and because of the materials given to her during her orientation.

8. Travers also complained to Travenol's personnel having affirmative action duties. As a result of her complaints, about June 15 Travers' employment title was retroactively changed from a senior technician-histology in the toxicology lab to that of research assistant in the toxicology lab. Travers also received a check from Travenol dated June 14, 1979, covering the retroactive pay differential between the two positions.

9. Travers' initial job designation was not the result of any discrimination by Travenol based on Travers' race or color. Travenol's errors in connection with the matters referred to in Findings 5 through 8 were entirely unrelated to the fact that Travers is black. However, Travers' color and other physical characteristics make her highly sensitive to the possibility (or the appearance) of race-or color-based discrimination, and Travers reasonably believed she had been discriminated against in her initial hiring (although that was not in fact the case).

10. Before June 15 Elizondo was Travers' immediate supervisor in the histology lab. Although Travers had over 25 years' experience before coming to work for Travenol, she had never before had to work under the direct supervision of any other person, always having run her own lab. Travers was unable to adjust to normal supervision. Throughout Travers' term of employment

with Travenol, she and Elizondo experienced a personality conflict that severely disrupted the work environment. Although a substantial part of the fault was clearly attributable to each, Travers was unable or unwilling to recognize that any part of the fault could be her own.

11. At the time of the June 15 job reclassification referred to in Finding 8, Travers was furnished a job description for a research assistant that included objectives, job duties and assignments. Because of the problems referred to in Finding 10 and as part of Travenol's good faith effort to minimize or eliminate the sources of friction, Travers was told that she was to report directly to Izzo.

12. Despite Izzo's and Travenol's efforts, Travers continued to view every instance of job difficulty as race-or color-oriented and as evidence of discrimination. Travenol was thus confronted with an ongoing, intolerably disruptive situation in the lab that made it impossible to carry on its work for which Elizondo and Travers (and Izzo as their supervisor) had responsibility. That situation ultimately resulted in Travenol drafing warning letters to both Elizondo and Travers about October 5. Travenol's conduct in that respect in no way reflected race-or color-based discrimination against Travers.

13. During the course of her employment with Travenol, Travers committed numerous acts of insubordination. As the result of her sensitivity referred to in Finding 9, a sensitivity that fed on itself and caused Travers' continuing misperception of many ordinary occurrences as somehow evidencing discrimination, Travers engaged in such bizarre conduct as erecting a cardboard barricade around her work area to keep from being "spied on" and dividing the work bench area in half with a shelf to prevent encroachment on her work area.

14. On December 20 Travers, who incorrectly perceived herself as the victim of continuing race and color discrimination by Travenol and many of its personnel, went

to the Equal Employment Opportunity Commission ("EEOC") to complain of such discrimination. Travers did not apprise Travenol that she was doing so, simply advising Izzo she wanted to take a few hours off and leaving a note referring to her running an errand.

15. Because the intolerable working situation had not abated, on December 21 both Elizondo and Travers received identical letters from management advising them on their conduct and behavior and the procedure to follow as to work-related problems in the lab. On that date Travenol supervisory personnel met separately with each of Elizondo and Travers to discuss the letters and warn them about the seriousness of the problem and the possible adverse consequences. Travers manifested the same inflexibility and unwillingness to recognize her own faults at the meeting that she had displayed throughout her employment. Neither the letters (which had to have been previously prepared) nor the meetings were in retaliation for Travers' having gone to EEOC the day before, a fact then unknown to Travenol.

16. In December 1979 both Elizondo and Travers received merit salary increases. Elizondo, who was on a yearly review cycle, received an 8% increase, substantially lower than the increases she had previously received. Travers, who was on a six-month review cycle, received a 4% increase. Travers walked out of a meeting with Izzo when he attempted to explain the reasons for the small increase.

17. On January 30, 1980, within the time frame established by corporate policy, Travers was placed on the CAPS method of review given salaried exempt personnel. At that time Travers received a "slight improvement" (or "SI") rating. For purposes of that review Travers' performance had been reviewed on the basis of the job description given her June 15. Again neither the method of review nor the review itself was the result of or evidenced any race- or color-based discrimination by Travenol.

18. On February 8, 1980 Travers was again insubordinate in refusing to remove the cardboard barricade she had erected in the lab around her work area, in refusing to cooperate in the establishment of a central filing system for the histology lab and in leaving her work area while her supervisor was attempting to give her work assignments. Those incidents were the proverbial straw that broke the camel's back. On that date Travers was suspended, pending investigation, from her position of employment, and on February 22, 1980 Travers was discharged by Travenol for insubordination.

19. Travenol did not terminate Travers because of her race. Travenol did not retaliate against Travers for filing a charge with the EEOC in December 1979 or for making justifiable complaints concerning working conditions. Travenol did not otherwise discriminate against Travers because of her race or color. Indeed had Travenol encountered comparable conduct from an employee who was not a Black person, it would in all likelihood (with total justification) have terminated that employee long before it terminated Travers.

20. Travenol's request for an award of attorneys' fees against Travers poses a close question. Such awards against unsuccessful Title VII plaintiffs are limited to situations in which the plaintiffs' claims are "frivolous, unreasonable or groundless." But for Travenol's initial errors in classifying her as a non-exempt employee and then not promptly changing that classification, Travers' claims of discrimination might have fit that description. However, Travers reasonably believed that (a) the downgrading of her job in the first instance and (b) the failure of Travenol to correct the situation until she had brought the matter to the attention of supervisory personnel having affirmative action responsibility were the result of race- and color-based discrimination. Because that belief was reasonable, Travers' perception of the other conduct of Travenol and its employees as

also discriminatory cannot be held to have been frivolous. In particular, under all the circumstances Travers also reasonably believed her termination was in retaliation for her having filed an EEOC complaint. Travers' claims are therefore found to have been non-frivolous, reasonable and not groundless[3]

Conclusions of Law ("Conclusions")

1. This Court's jurisdiction is invoked under 28 U.S.C. §§1331, 1334, 2201 and 2202.

2. Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e to 2000e-17, does not prohibit discrimination in employment unless such discrimination is based upon race, color, religion, sex or national origin.

3. It was Travers' burden to prove by a preponderance of the evidence that Travenol discriminated against her because of her race or color. Travers has failed to prove by a preponderance of the evidence that Travenol terminated her, or in any other way discriminated against her, for any such reason.

4. As for Travers' claim that Travenol terminated her for filing a charge with the EEOC or for making justifiable complaints about working conditions in the lab, the burden was on Travers to prove by a preponderance of the evidence that Travenol did so or otherwise discriminated against her in retaliation for filing such a charge or for making such justifiable complaints. Travers has failed to prove by a preponderance of the

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[3] In making this Finding 20 the Court has given full consideration to the similar discrimination claim and Title VII lawsuit brought against a prior employer. It has evaluated Travers' conduct in this case against the standard of what would have been believed by a reasonable objective claimant, not in terms of Travers' own hypersensitivity to what she believes is widespread discrimination against her.

evidence that Travenol terminated her, or in any other way discriminated against her, for any such reason.

5. As to each of Travers' claims the law is with Travenol and against Travers.

6. Because Travers' claims were based on her reasonable belief that she had been discriminated against due to her race or color and had been the victim of retaliatory conduct by Travenol, such claims were not "frivolous, unreasonable or groundless," nor did they clearly become so during the litigation. Travenol is therefore not entitled to recover its attorneys' fees. *Christiansburg Garment Co.* v. *EEOC,* 434 U.S. 412, 422 (1978). Moreover, because the taxation of substantial costs against Travers would similarly "undercut the efforts of Congress to promote the vigorous enforcement of the provisions of Title VII" (*id.*), each party shall bear her or its own costs.

/s/ Milton I. Shadur
Milton I. Shadur
United States District Judge

Date: July 9, 1982

APPENDIX I

UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Chicago, Illinois 60604
February 1, 1983

Before

Hon. WALTER J. CUMMINGS, *Chief Circuit Judge*
Hon. WILLIAM J. BAUER, *Circuit Judge*

MILDRED M. TRAVERS,

Plaintiff-Appellant,

No. 82-2247

vs.

TRAVENOL LABORATORIES, INC.,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 80 C 4364
Milton I. Shadur, *Judge.*

ORDER

This matter comes before the court for consideration of the MOTION TO PROCEED IN FORMA PAUPERIS (which includes a request for appointment of counsel) filed September 20, 1982, and the MOTION TO SUPPLEMENT RECORD filed September 10, 1982 by the pro se plaintiff-appellant.

The motion for leave to appeal in forma pauperis is DENIED as MOOT; plaintiff-appellant has already paid the docket fee. The motion to supplement the record

with the entire transcript is apparently a request for fees for transcripts which, pursuant to 28 U.S.C. § 753 (f), may be granted to a person permitted to appeal in forma pauperis if the court finds "that the appeal is not frivolous (but presents a substantial question)." While plaintiff-appellant appears to be indigent within the meaning of 28 U.S.C. § 1915(a) and Rule 24(a), Federal Rules of Appellate Procedure, the motion for transcripts is DENIED for lack of arguable merit to the appeal. For the same reason, the motion for appointment of counsel is DENIED. We do note that attorney's fees may be awarded to prevailing party in an employment discrimination case, and plaintiff-appellant is not precluded from obtaining retained counsel.

IT IS FURTHER ORDERED that the following briefing schedule shall apply to the disposition of this appeal:

1. Plaintiff-appellant's brief and appendix is due on or before March 3, 1983.
2. Defendant-appellee's brief and appendix is due on or before April 4, 1983.
3. Plaintiff-appellant's reply brief, if any, is due on or before April 18, 1983.

APPENDIX J

UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Chicago, Illinois 60604

May 3, 1983

Before

Hon. RICHARD A. POSNER, *Circuit Judge*

MILDRED M. TRAVERS,

Plaintiff-Appellant,

No. 82-2247

vs.

TRAVENOL LABORATORIES, INC.,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

No. 80 C 4364

Judge Milton I. Shadur

This matter comes before the court for its consideration on the following documents:

1. "APPELLEE'S MOTION TO STRIKE APPELLANT'S BRIEF AND MOTION TO DISMISS THE APPEAL" filed herein on April 4, 1983, by counsel for the defendant-appellee.
2. "A RESPONSE TO APPELLEE'S MOTION TO STRIKE APPELLANT'S BRIEF AND MOTION TO DISMISS HER APPEAL" filed herein on April 22, 1983, by pro se plaintiff-appellant, Mildred M. Travers.

On consideration thereof,

IT IS ORDERED that Appellee's Motion to Strike Appellant's Brief and Motion to Dismiss the Appeal is DENIED on both grounds.

APPENDIX K

UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Chicago, Illinois 60604

Submitted September 27, 1983*

October 4, 1983

Before

Hon. WALTER J. CUMMINGS, Chief Judge
Hon. WILBUR F. PELL, JR., Circuit Judge
Hon. RICHARD D. CUDAHY, Circuit Judge

No. 82-2247

MILDRED M. TRAVERS,

Plaintiff-Appellant,

vs.

TRAVENOL LABORATORIES, INC.,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 80-C-4364
Hon. MILTON I. SHADUR, *Judge*.

* On April 4, 1983, defendant-appellee filed a motion requesting affirmance without oral argument, and on May 3, 1983 plaintiff-appellant filed a response stating her need for oral argument. Upon consideration of these statements and the briefs, the appeal is submitted for decision on the briefs and the record. *See* Rule 34(a), Fed. R. App. P.; Circuit Rule 14(f).

ORDER

Plaintiff-appellant appeals pro se from the district court's decision rejecting her claim of employment discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* We affirm.

I.

Mildred Travers is a Black female, and a histologist by profession. In February and March of 1979, defendant Travenol Laboratories advertised for a histologist, and Travers applied. After her interview on February 16, she was handed a packet of information for "salaried exempt" employees. On March 23, she received an offer of a "salaried non-exempt"[1] position as a senior technician; due to the interim promotion of another employee, the exempt position was no longer available. Travers began employment April 2 and at that time discovered that she was a non-exempt rather than an exempt employee. She immediately complained to the employment supervisor and to Travenol's affirmative action department. On June 15, her title was retroactively changed to research assistant (apparently an "exempt" position), and she received a check for the retroactive pay differential between the two positions.

During the course of her employment with Travenol, Travers had numerous difficulties with co-workers and supervisors, particularly her initial immediate supervisor, Rita Elizondo. Travers viewed all these problems as the result of race disrimination, and repeatedly went

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[1] "Salaried exempt" (or "administrative") and "salaried non-exempt" (the latter also referred to as "biweekly") are terms nowhere defined in the record. Perhaps "exempt" refers to exemption from wage and hour regulations. In any event, "salaried exempt" is apparently viewed by both parties as the more prestigious classification.

outside the chain of command to lodge her discrimination complaints. She also erected a cardboard barrier around her lab work area and blocked off her work space to prevent encroachment by co-workers. On December 20, 1979, Travers went to the EEOC with her discrimination complaints—a fact not known to Travenol until later. The continual disruption in the lab was of course a matter of considerable concern to Travenol, and on December 21, 1979 both Travers and Elizondo received warning letters (apparently prepared much earlier). On the same day supervisors met separately with both women to explain the adverse consequences of further disruption. At the end of the year Travers received a 4% pay increase, and her January 30, 1980 job performance review rating showed "slight improvement." Friction continued and on February 8, 1980 Travers was suspended for insubordination. She was discharged February 22.

II.

On August 18, 1980 Travers filed a pro se suit under the Civil Rights Act of 1866, 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* The § 1981 claim was tried to a jury which rendered a decision in favor of Travenol. The Title VII claim was simultaneously tried to the court. Judge Shadur concluded that the initial confusion over the exempt/non-exempt positions was not due to race discrimination, the warning letter was not in retaliation for Travers' EEOC complaint, the performance review was not racially biased, and that Travenol had ample reason for terminating Travers—and probably would have done so earlier had she not been Black. The judge concluded that Travers was hyper-sensitive about race, and was totally unable to see her own contribution to her workplace difficulties. It is only the Title VII decision that is on appeal.

III.

It is not entirely clear which issues appellant wants to pursue on appeal. In her initial requests for appointment of counsel and for transcripts (both denied for lack of arguable merit to the appeal), Travers seemed to focus on alleged misconduct on the part of defense counsel (e.g. facial expressions denigrating her position; frequent objections that broke her train of argument). Appellant's allegations of aggressive courtroom demeanor do not seem at all far-fetched in view of counsel's aggressive litigation style, evidenced before this court by appellee's repeated attempts to obtain dismissal of this pro se appeal for technical noncompliance with the Rules of Appellate Procedure. However, even if appellant is correct in her observations of facial expressions (we assume she is merely unfamiliar with the function of objections at trial), we see no grounds for reversal here. It is conceivable although unlikely that a jury might be so influenced by counsel as to render a verdict not based on the evidence, but the jury verdict in this case has not been appealed, so that situation—and the question of the evidence needed to support such an argument on appeal—is not before us. Travers appeals only the issue tried to the court and we are totally unable to believe that a very capable trial judge would be so swayed by counsel that his judgment should be reversed.

In her briefs, Travers has limited her arguments to the merits of the case, and challenges the trial court's factual inferences. In reviewing factual findings of the district court, we are bound by the "clearly erroneous" standard of Rule 52(a), Federal Rules of Civil Procedure. This rule rests in part on the district court's unique opportunity to view witnesses and assess the credibility of their testimony. *Inwood Laboratories, Inc.* v. *Ives Laboratories, Inc.*, 456 U.S. 844 (1982); *Hornick*

v. *Noyes,* 708 F.2d 321, 325 (7th Cir. 1983). The trial judge's decision that Travenol discharged Travers for legitimate, nondiscriminatory reasons necessarily depended on his assessment of the credibility of plaintiff's and defendant's witnesses. We will reverse a decision based on witness credibility only if left with a "definite and firm conviction that "a mistake has been committed." *Medtronic* v. *Benda,* 689 F.2d 645, 647 (7th Cir. 1983). After a careful review of the record, and the briefs and documents filed before this court (including those filed *in camera*), we can find no basis for questioning the district court's implicit credibility determinations. The court's findings are not clearly erroneous, and the judgment is accordingly AFFIRMED.

APPENDIX L

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
November 18, 1983
Before
Hon. WALTER J. CUMMINGS, *Chief Judge*

MILDRED M. TRAVERS,
Plaintiff-Appellant,

No. 82-2247

vs.

TRAVENOL LABORATORIES, INC.,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 80 C 4364
Judge Milton I. Shadur

This matter comes before the court for its consideration upon the "MOTION TO STAY MANDATE" filed herein on November 14, 1983, by pro se plaintiff-appellant.

Plaintiff-appellant was given full opportunity to establish discrimination. However, upon examination of the evidence, Judge Shadur found that the discharge occurred for legitimate reasons. This case is completely devoid of any issue worthy of the Supreme Court's attention. Accordingly,

IT IS ORDERED that appellant's "Motion to Stay Mandate" is hereby DENIED.